

SUMMARY OF MOTIONS TO DISMISS AND REPLIES

Company	Filing	Summary
CLEC Coalition (Mid-Maine Communications, Oxford Networks, Revolution Networks, Pine Tree Networks joined by the OPA, Cornerstone Communications, and Great Works Internet)	Motion to Dismiss	<ol style="list-style-type: none"> 1. Timetable <ul style="list-style-type: none"> ➤ The Section 252 timetable does not apply because interconnection agreements have change of law provisions ➤ Verizon failed to pursue negotiations pursuant to change of law provisions 2. October 2nd letter was not arbitration request <ul style="list-style-type: none"> ➤ Merely notice of intentions at that time; Verizon took no further steps 3. Procedural infirmities <ul style="list-style-type: none"> ➤ Even if default timetable applies, Verizon failed to include with the filing: (1) unresolved issues (has not specifically identified unresolved issues for any CLEC); (2) position of each of the parties with respect to those issues (Verizon did not even attempt to identify which IAs it seeks to amend, much less clearly articulate the differences between carriers) ➤ PUC's procedural order flips burden to CLECs by requiring CLECs to identify issues of dispute ➤ Before requesting arbitration, Verizon must give explicit request for negotiations, establish negotiation schedule, conduct good faith negotiations and file petition to arbitrate that satisfies requirements of Section 252(b)(2). ➤ If Verizon wants generic changes, they should be dealt with in Wholesale Tariff case that is not bound by abbreviated timetable. ➤ If PUC does not close, Verizon should be required to answer data requests
	Reply Brief	<ol style="list-style-type: none"> 1. Verizon's Petition Fails to Comply with Section §252 <ul style="list-style-type: none"> ➤ FCC explicitly stated that it expected states to monitor compliance with §252 ➤ Contrary to Verizon's assertions, compliance with §252 was, and is, possible ➤ If Verizon can't describe the issues, how can the Commission resolve them? 2. Other dockets should be resolved first <ul style="list-style-type: none"> ➤ If arbitration is dismissed, interconnection agreements continue because the change of law provisions have not been triggered, because of the merger

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		<p>conditions</p> <ul style="list-style-type: none"> ➤ General sunset provisions of merger conditions do not apply to availability of UNE issues ➤ 271 obligations provide another source of continuing obligation to provide UNEs ➤ TRO did not require speedy transition ➤ Parties should be required to negotiate in good faith, either pursuant to §252 or the change of law provisions <p>3. The Commission should reassert control over the regulatory agenda and resolve existing cases first</p> <ul style="list-style-type: none"> ➤ March 5, 2002, letter from the PUC to Verizon (“Dinan Letter”), promised better wholesale environment because wholesale services and dark fiber would be tariffed ➤ GWI’s protracted contract negotiation (ongoing since March 2003) experience shows bad faith ➤ The Commission should not let Verizon upset its agenda
Adelphia, CTC, DSLnet, ICG Telecom, Level 3, Lightship and PaeTec (Competitive Carrier Coalition)	Motion to Dismiss	<p>1. No Valid Change of Law - GTE/Bell Merger conditions</p> <ul style="list-style-type: none"> ➤ Under BA/GTE Merger Conditions, Verizon is required to offer UNEs under its existing agreements until the TRO is final and non-appealable. ➤ <i>UNE Remand</i> and <i>Line Sharing Orders</i> which were appealed and remanded in <i>USTA I</i> and then consolidated by the FCC with the <i>TRO</i> proceeding. <i>TRO</i> is captioned as “Order on Remand” in both <i>UNE Remand</i> and <i>Line Sharing</i> dockets. Thus, as long as <i>TRO</i> proceeding remains pending before FCC, <i>UNE Remand</i> and <i>Line Sharing Orders</i> are not final – non appealable. <p>2. Procedural Infirmities</p> <ul style="list-style-type: none"> ➤ Verizon failed to identify unresolved issues and positions of the parties ➤ Several CLECs tried to negotiate with Verizon by submitting redlined versions of the proposed amendment but Verizon has not acknowledged the CLEC efforts ➤ Section 252 requires the petitioner to file with the Commission and the other party on the same day; Verizon submitted petitions to Commission first and CLECs second. ➤ If Verizon wants to reserve rights to modify petition (and is allowed to modify

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	Reply Brief	<p>after <i>USTA II</i> is final) then any time spent now is wasted. Commission should wait for final rules and do it once.</p> <p>3. Routine Modifications</p> <ul style="list-style-type: none"> ➤ There is no need for interconnection amendment relating to routine modifications; <i>TRO</i> was self-executing on this point ➤ <i>TRO</i> does not change the law on this point –it merely clarifies that Verizon’s refusal to perform such modifications violated existing law, thus no change of law has occurred. ➤ Costs may already be included in existing UNE rates. <p>1. Merger Conditions Apply</p> <ul style="list-style-type: none"> ➤ FCC imposed different conditions on availability of UNEs and pricing of UNEs ➤ Sunset provisions do not apply to provisions with their own timeframe ➤ Verizon is abusing its market power <p>2. Procedural infirmities require dismissal</p> <ul style="list-style-type: none"> ➤ It is not clear that the FCC had authority to expand the application of § 252 ➤ Section 252 states that the negotiation is initiated by the CLEC ➤ If the FCC had authority under §252, then Petition should be dismissed for failure to comply with procedures proscribed by that section ➤ If the FCC did not have authority under §252, then Petition should be dismissed because Verizon does not have a basis for applying for arbitration ➤ Some CLECs did respond to Verizon’s October 2nd letter with redlines, but Verizon did not respond with good faith negotiations ➤ The formalities have purpose and the limited time for arbitration requires that they be followed <p>3. Instability of law requires dismissal</p> <ul style="list-style-type: none"> ➤ Many issues are still open for appeal to the Supreme Court, which means that the law could change again ➤ <i>TRO</i> is “half-baked” and going forward on it does not make sense <p>4. Must dismiss Verizon’s routine network modification proposal</p> <ul style="list-style-type: none"> ➤ The FCC found ILEC failures to perform routine modifications to be
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		<p>“discriminatory on its face”</p> <ul style="list-style-type: none"> ➤ The TelAct has always required that ILECs offer UNEs on a nondiscriminatory basis, thus modification was an existing duty
Sprint	Motion to Dismiss	<p>1. Procedural Infirmities</p> <ul style="list-style-type: none"> ➤ Verizon did not provide prior notice of its intention to file Petition ➤ Sprint contacted Verizon after the October 2nd letter was issued; Sprint sent redlined draft agreement on October 29, 2003, which Verizon did not respond to. ➤ Verizon avoided meaningful discussions; did not accept or reject Sprint’s proposals – which Sprint considers a breach of good faith negotiation requirements ➤ Verizon’s Petition fails to set forth the issues and positions of parties. ➤ Verizon did not provide copy on the day filed with Commission <p>2. Attachments</p> <ul style="list-style-type: none"> ➤ Describes extensive effort to negotiate with Verizon and minimal response from Verizon
AT&T	Response to Sprint and CC Motions	<p>1. Petition Should Not Be Dismissed</p> <ul style="list-style-type: none"> ➤ AT&T does not want the arbitration dismissed because there are provisions in the <i>TRO</i> that benefit CLECs that they can only take advantage of if they are arbitrated. ➤ AT&T followed the §252 process; they have had some conversations with Verizon <p>2. Merger Conditions</p> <ul style="list-style-type: none"> ➤ AT&T agrees that merger conditions prevent Verizon from amending the interconnection agreement to discontinue UNEs or combinations, but other issues can be arbitrated and AT&T will be harmed if it is dismissed
	Response to CCC Motion	<p>1. Merger conditions moot certain issues</p> <ul style="list-style-type: none"> ➤ Agree with CCC that Verizon remains obligated to unbundle switching and dedicated transport pursuant to BA/GTE merger ➤ Enforcement Bureau agrees that UNE availability condition survives sunset provision (<i>see Ameritech/SBC Merger Order</i>)

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	Motion to Dismiss Verizon's Updated Petition	<ul style="list-style-type: none"> ➤ <i>TRO</i> is expressly captioned “Order on Remand” from the <i>UNE Remand</i> and <i>Line Sharing</i> dockets ➤ The continuing effectiveness of the merger conditions is consistent with Enforcement Bureau interpretation of the shared transport condition of the Ameritech/SBC Merger order ➤ <i>TRO</i> ¶ 705 did not change merger obligations; FCC’s UNE rule requirements are separate and distinct from merger requirements, which were additional requirements <p>2. Routine Network Modifications are not arbitrable</p> <ul style="list-style-type: none"> ➤ <i>TRO</i> did not establish new law regarding ILEC obligations to perform routine network modification ➤ <i>TRO</i> clarified that Verizon’s refusal to perform modifications violated existing law. ➤ Verizon cannot charge additional fees for modifications because it is already recovering these costs through its UNE rates <p>1. Verizon’s Update to Petition is premature</p> <ul style="list-style-type: none"> ➤ <i>USTA II</i> is not yet applicable law – it is currently stayed and may be stayed even longer ➤ Commission should only address issues that are clearly ripe ➤ Verizon’s obligations to provide UNEs has not changed as a result of <i>USTA II</i> because of the merger conditions <p>2. Verizon has not complied with its Change of Law provision</p> <ul style="list-style-type: none"> ➤ Verizon must request renegotiation via letter and it has not done so ➤ Amendment contains no explanation or basis for amendments ➤ Because <i>USTA II</i> has not taken effect, there is no change of law
Conversent	Response to Motions to Dismiss	<p>1. Merger Conditions Apply</p> <ul style="list-style-type: none"> ➤ FCC was concerned about the anticompetitive effects of a merger ➤ The language of merger is clear; the sunset provision does not apply to the UNE availability provision ➤ Verizon’s interpretation of <i>USTA I</i> is wrong; The <i>UNE Remand Order</i> was not

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		<p>vacated, it was remanded only</p> <ul style="list-style-type: none"> ➤ Courts “vacate” when rule is incapable of application, even with further “tweaking” by the agency ➤ <i>USTA I</i>’s remand of <i>UNE Remand Order</i> made clear that further proceedings were necessary ➤ <i>TRO</i> did not intend to override merger conditions; FCC was concerned about a situation where there were two conflicting sets of rules, not a situation where there are no rules ➤ Merger conditions established an independent legal obligation of Verizon to continue to provide UNEs as they existed at the time the agreements were entered into, until the <i>TRO</i> rules run their appellate course. ➤ Conflicting FCC orders should be read such that the more specific controls <p>2. Network Modification Provisions Should Be Dismissed</p> <ul style="list-style-type: none"> ➤ FCC clearly ordered Verizon to stop denying orders on the grounds of no facilities; no indication of a need to negotiate or arbitrate ➤ Verizon’s request to arbitrate is a delay tactic ➤ Previously, Verizon provisioned UNEs at current rates, even where modifications were needed ➤ Existing rates compensate Verizon for routine modification; FCC said “costs associated with these modifications often are reflected in recurring rates that competitive LECs pay for loops” <p>3. Wholesale Tariff Obligations should control</p> <p>4. 271 Obligations Are Independent of <i>USTA II</i></p> <p>5. Some Aspects of Petition Could Be Arbitrated</p>
MCI	Opposition to Motions to Dismiss	<p>1. Other CLECs have no right to object to a MCI/Verizon arbitration</p> <ul style="list-style-type: none"> ➤ §252 calls for bilateral negotiations; other carriers cannot oppose on behalf of MCI ➤ MCI wants to amend its interconnection agreement on issues that are ripe <p>2. Procedural defects can be cured</p> <ul style="list-style-type: none"> ➤ MCI believes scope of proposed amendment is limited

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		<p>3. Pending appeals of <i>USTA II</i> should not delay proceeding</p> <ul style="list-style-type: none"> ➤ Some provisions of <i>TRO</i> not impacted by appeals ➤ Parties can address possibility of future changes to law in language of interconnection agreement ➤ BA/GTE merger conditions address obligations, not whether there should be an arbitration proceeding ➤ BA/GTE merger conditions do not apply to provisions of <i>TRO</i> not subject to appeal
Verizon	Response to CLEC Coalition and Sprint Motions to Dismiss	<p>1. §252 Timetable Should Apply</p> <ul style="list-style-type: none"> ➤ Verizon filed its petition to arbitrate within the window established by the <i>TRO</i>, derived from §252(b). ➤ Paragraph 704 of the <i>TRO</i> says timing set forth in 252(b) applies “even in instances where a change of law provision exists,” and that “a state commission should be able to resolve a dispute over contract language at least within the nine month timeframe envisioned for new contract arbitrations.” <p>2. Procedural Infirmities</p> <ul style="list-style-type: none"> ➤ Petition doesn’t have to comply with all the formal requirements of §252(b)(2) - only the timetable applies. ➤ Verizon complied with the purpose of § 252(b)(2) by setting out its position in detail. ➤ Due to consolidation, it’s not possible to list all CLEC positions and unresolved issues; unique situation ➤ Dismissal is too drastic a measure; does not make sense to start over with carriers like Sprint ➤ Verizon did not act in bad faith just because it refused to accept Sprint’s proposals; disagrees with Sprint’s account of the negotiations <p>3. Verizon tried to negotiate in good faith</p> <ul style="list-style-type: none"> ➤ The October 2nd letter was entitled <i>Notice of Discontinuation of UNEs and Notice of Availability of Contract Amendment</i> and was sufficiently clear to put CLECs on notice that change of law provisions of interconnection agreements were activated

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		<ul style="list-style-type: none"> ➤ Some CLECs initiated negotiations based on notice; CLEC Coalition failed to initiate any negotiations ➤ <i>TRO</i> paragraph 703 says “a party cannot contend that the negotiation time period did not begin because another party failed to send a request for negotiation.” “Negotiations will be deemed to commence upon the effective date of this Order.” <i>Id.</i> ➤ <i>USTA II</i> affirms the unbundling relief Verizon requests, no one challenged the FCC’s <i>TRO</i> implementation rules, and <i>USTA II</i> does not reset the §252 clock in any way.
Verizon	Response to Competitive Carriers Coalition Motion to Dismiss	<p>1. BA/GTE Merger</p> <ul style="list-style-type: none"> ➤ BA/GTE merger conditions apply only to the <i>UNE Remand</i> and <i>Line Sharing Orders</i>. Both were vacated by DC Circuit in <i>USTA I</i> – that decision took final effect 2/20/03 and cert was denied 3/24/03 which makes the decision final and non-appealable. ➤ Merger order had a sunset clause which said: “all conditions set out in the Order...shall cease to be effective and shall no longer bind BA/GTE in any respect 36 months after the Merger Closing Date.” The merger closed in July 2000, so the conditions sunset in July 2003. ➤ <i>TRO</i> order requires the new obligations and limitations to be implemented promptly. <p>2. Procedural infirmities</p> <ul style="list-style-type: none"> ➤ Verizon’s petition complies with applicable requirements of §252. ➤ Requirements of §252(b)(2) do not necessarily apply to amendments. ➤ FCC held that the §252(b) <i>timetable</i> and negotiation process apply, but never held that a petition seeking resolution of disputes over amendments related to the <i>TRO</i> would necessarily have to comply with all the formal requirements of a petition for arbitration of a brand new agreement. ➤ Complied with technical requirements in light of the circumstances. Most responses did not represent serious efforts to negotiate and were received very late, so Verizon couldn’t summarize all the positions.

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	Response to AT&T	<ul style="list-style-type: none"> ➤ Commission should move forward to achieve prompt and equitable results, not satisfy empty formalities. ➤ Prompt implementation of the <i>TRO</i> is a critical Commission responsibility; <i>USTA II</i> affirmed every portion of <i>TRO</i> that cut back on ILEC unbundling requirements; the law is clear and it is highly unlikely the findings will be reversed. <p>3. Routine modifications</p> <ul style="list-style-type: none"> ➤ The FCC has finally resolved a controversial competitive issue that has arisen repeatedly. ➤ The Commission should not dismiss the petition on routine network modifications. <p>1. The updated filing facilitates efficient resolution without prejudicing CLECs</p> <ul style="list-style-type: none"> ➤ Amendment is not one-sided – amendment accommodates possibility that <i>USTA II</i> will be stayed and that it might not be stayed ➤ CLECs are not harmed by the Amendment; they are actually helped because it implements non-Verizon friendly changes ➤ AT&T just trying to slow proceeding down; its approach would require multiple arbitrations <p>2. Contractual change of law provisions “are inapposite”</p> <ul style="list-style-type: none"> ➤ This proceeding is an FCC mandate; contract does not prohibit party from modifying its original position to account for subsequent events ➤ Arbitrator cannot render a decision which ignores <i>USTA II</i> <p>3. Sunset provisions of merger conditions applies</p> <ul style="list-style-type: none"> ➤ Savings clause in merger conditions concerning “specific deadlines” does not apply because Paragraph 38 does not establish a specific deadline – it only references an “event”
Verizon	Response to PO	<p>1. Arbitration should remain distinct from wholesale tariff</p> <ul style="list-style-type: none"> ➤ Issues in this case are different from other proceedings, include new matters ➤ Concerned that wholesale tariff will be further delayed ➤ Must change interconnection agreements

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		2. No position on posture of interconnection agreements if Motion granted ➤ Commission should not worry about continued applicability issues – let individual CLECs file complaints
Quest	Letter	Quest has no record of Verizon's demand to initiate negotiations
Z-Tel	Letter	Z-Tel believes that the arbitration window has not been triggered because Verizon never sought to amend the agreement
USAT	Letter	Verizon has initiated this proceeding prematurely
Lincolntown Communications, Inc.	Letter	Lincolntown does not consider itself to have a need to amend its interconnection agreement
Nextel/Verizon	Stipulation	Dismisses Nextel from Arbitration
T-Mobile	Letter	No substantive response to Verizon's petition is appropriate at this time
Skowhegan OnLine	Letter	No bona fide request for negotiations was ever received from Verizon – supports Motions to Dismiss